

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of DANIELLE POTHOOFF and
DEVYN FRANKLIN, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

MYRA FRANKLIN,

Respondent-Appellant.

UNPUBLISHED
December 12, 2006

No. 270632
Bay Circuit Court
Family Division
LC No. 03-008000-NA

Before: Murphy, P.J., and Smolenski and Kelly, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating her parental rights to the minor children pursuant to MCL 712A.19b(3)(b)(ii), (g), and (j)¹. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

In order to terminate respondent's parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re McIntyre*, 192 Mich App 47, 50; 480 WN2d 293 (1993). We review the trial court's findings in termination proceedings for clear error. MCR 3.977(J); *In re Trejo*, 462 Mich 341, 256-257; 612 NW2d 407 (2000).

The trial court did not clearly err in finding at least one of the statutory grounds for termination under MCL 712A.19b(3) has been proven by clear and convincing evidence. In 2003, accusations were made by Danielle and her older sister, Kayla, that their stepfather, James Franklin, had sexually abused them. Respondent did not believe those accusations and, when the dependent/neglect petition was dismissed as unnecessary and Franklin was acquitted of the criminal charges, respondent allowed him to move back into the family home. Two years later,

¹ The parental rights of Devyn's father, James Franklin, were also terminated, but he is not a party to this appeal.

Danielle disclosed that the sexual abuse against her by Franklin was continuing. Respondent once again doubted those accusations at the time of the termination trial.

In basing its termination order upon subsection 19b(3)(b)(ii), the trial court specifically limited its finding to respondent's failure after 2003 to protect Danielle from further abuse. A review of the evidence shows clearly and convincingly that respondent should have been alerted to possible sexual abuse by Franklin. Kayla and Danielle had reported the abuse in 2003 to their biological father, who then told respondent. Although Danielle recanted her accusations, the Department of Human Services ("DHS") substantiated the sexual abuse against Kayla. Danielle's retraction was caused by her young age, which made her very sensitive to Franklin's threats, respondent's lack of support towards Kayla, and Danielle's own fear of breaking apart the family. Respondent did not recognize the significance that two of her daughters had made similar accusations against Franklin, or that Kayla was consistent and adamant to the point where she became painfully estranged from the family. Indeed, respondent ignored many clear signals about the abuse and seemed willing to believe the accusations only if provided indisputable proof. Respondent also did not understand the pressures upon Kayla and Danielle to make such accusations or the effect her disbelief and lack of support would have on Danielle. Respondent's act of taking Kayla to see Franklin's defense attorney demonstrated a lack of understanding of Kayla's situation. When Franklin was ultimately acquitted in his criminal trial, respondent treated that as complete vindication of his innocence and permission for the family to get back to normal, with the exception of Kayla, who had gone to live with her biological father. Such an approach was unrealistic and failed to adequately safeguard Danielle. This evidence clearly and convincingly showed that respondent should have known about the possibility of sexual abuse by Franklin and that her failure to protect Danielle resulted in the continuation and eventual escalation of sexual abuse against Danielle.

The evidence also established that there was a reasonable likelihood that the children would be sexually abused in the foreseeable future if returned to respondent's home. After Danielle made her accusations in 2005, respondent again doubted the accusations and showed no remorse for her prior failure to protect Kayla or Danielle. The Fugitive Report indicated that respondent had also resumed contact with Franklin while he was evading arrest from the police, despite her denials to the trial court. Respondent herself admitted to resisting the DHS's efforts to assist her because she interpreted their assistance as forced acceptance of the accusations. The psychological evaluator diagnosed respondent as using denial as a coping mechanism when faced with family problems. Respondent still did not believe the accusations at the time of the termination trial. Such disbelief made it impossible for respondent to realize the need to protect the children. The trial court did not clearly err when it found clear and convincing evidence established MCL 712A.19b(b)(ii).

When a lower court finds a statutory ground for termination, it must terminate parental rights unless termination was clearly against the child's best interests. MCL 712A.19b(5); *In re Trejo Minors*, *supra* at 352-353. Respondent concedes on appeal that Danielle did not want to live with respondent, although she argues that Danielle could benefit from her motherly guidance. With respect to 12-year-old Devyn, it was clear that she firmly wanted to be reunited with respondent and did not believe Franklin had committed any sexual abuse. It was also clear that respondent and Devyn shared a strong and loving bond. However, those feelings were

outweighed by Devyn's need to be protected from sexual abuse. A parent must provide more than love to a child, who also needs a safe and secure home environment free from sexual abuse.

Affirmed.

/s/ William B. Murphy
/s/ Michael R. Smolenski
/s/ Kirsten Frank Kelly